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40 UNITED STATES DISTRICT COURT
41 NORTHERN DISTRICT OF CALIFORNIA

42 EDUARDO GONZALEZ, ANTHONY
43 OCAMPO, ENCARNACION GUTIERREZ,
44 JOHAN MONTOYA, JUANCARLOS GÓMEZ-
45 MONTEJANO, JENNIFER LU, AUSTIN CHU,
46 IVY NGUYEN, ANGELINE WU, ERIC FIGHT,
47 CARLA GRUBB, DAVID CULPEPPER,
48 PATRICE DOUGLASS, and ROBAIR
49 SHERROD, BRANDY HAWK and ANDRE

50 Case Nos. 03-2817 SI, 04-4730 SI and
51 04-4731 SI

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54 STIPULATION OF PROPOSED
55 SETTLEMENT AND [PROPOSED]
56 ORDER OF PRELIMINARY
57 APPROVAL OF PROPOSED
58 CONSENT DECREE

1 STEELE, on behalf of themselves and all others
2 similarly situated,

3 Plaintiffs,

4 v.

5 ABERCROMBIE & FITCH STORES, INC., A&F
6 CALIFORNIA, LLC, A&F OHIO, INC., and
7 ABERCROMBIE & FITCH MANAGEMENT
8 CO.,

9 Defendants.

10 ELIZABETH WEST and JENNIFER LU,

11 Plaintiffs,

12 v.

13 ABERCROMBIE & FITCH STORES, INC., A&F
14 CALIFORNIA, LLC, A&F OHIO, INC., and
15 ABERCROMBIE & FITCH MANAGEMENT
16 CO.,

17 Defendants.

18 EQUAL EMPLOYMENT OPPORTUNITY
19 COMMISSION,

20 v.

21 ABERCROMBIE & FITCH STORES, INC., A&F
22 CALIFORNIA, LLC, A&F OHIO, INC., and
23 ABERCROMBIE & FITCH MANAGEMENT
24 CO.

25 Defendants.

1 Plaintiffs in the above-captioned Gonzalez action have alleged that Abercrombie
 2 & Fitch Stores, Inc. and related companies (“Abercrombie,” the “Defendant” or the “Company”)
 3 utilized and maintained discriminatory employment policies and practices against its African-
 4 American, Latino and Asian American (hereafter “Minority”) applicants and employees in
 5 violation of Title VII of the Civil Rights Act of 1964, as amended, 74 U.S.C. § 2000 et seq.
 6 (“Title VII”), 42 U.S.C. § 1981, and the California Fair Employment and Housing Act, Cal. Gov.
 7 Code §§ 12940 et seq. (the “FEHA”). Plaintiffs in the above-captioned West action have alleged
 8 that Abercrombie utilized and maintained discriminatory employment policies and practices
 9 against its female applicants and employees in violation of Title VII and FEHA. The U. S. Equal
 10 Employment Opportunity Commission (“EEOC) alleged in its enforcement action that
 11 Abercrombie engaged in discriminatory practices against both Minority and women applicants
 12 and employees in violation of Title VII.

13 Abercrombie has completely denied the allegations of Plaintiffs and the EEOC in
 14 their complaints.

15 The parties entered into court-ordered mediation for the purpose of attempting to
 16 settle the claims asserted. Those negotiations have been successful. Subject to the provisions in
 17 this Stipulation, Plaintiffs, the EEOC, and Defendant have agreed to the entry of the proposed
 18 Consent Decree submitted concurrently with this Stipulation and Order and attached hereto as
 19 Exhibit 1 (hereafter “Consent Decree” or “Decree”), as a full settlement of the actions. By
 20 entering into this Stipulation, Abercrombie continues to deny all allegations of unlawful race,
 21 ethnicity and gender discrimination contained in the Complaints of EEOC and the Plaintiffs. Nor
 22 does Abercrombie admit or concede that it has, in any manner, violated Title VII, § 1981, the
 23 FEHA or any other fair employment law prohibiting race, ethnicity and/or gender discrimination.

24 Plaintiffs and Abercrombie have further agreed that the settlement of this case
 25 should proceed as a class action under Rule 23 of the Federal Rules of Civil Procedure as
 26 described below, in order that this settlement will constitute a final and complete adjudication of
 27 the parties’ and class members’ rights, liabilities and obligations as set forth in the Consent
 28 Decree.

1 Plaintiffs assert they have presented evidence that the class certification
 2 requirements of Rule 23(a) and Rule 23(b)(2) and (b)(3) have been met. For purposes of
 3 settlement only, Defendant acknowledges that the evidence presented by Plaintiffs provides an
 4 arguable basis for finding those requirements have been met, and, for settlement purposes only,
 5 consents to the class certification sought in this Stipulation.

6 Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs and
 7 Defendant, through their respective counsel, jointly stipulate that the Court enter an Order as
 8 follows:

9 1. For purposes of settlement only, this case shall proceed as a class action
 10 pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure for equitable relief and
 11 pursuant to Rule 23(b)(3) for purposes of monetary relief. The class represented by Plaintiffs (the
 12 "Settlement Class") shall be as follows:

13 a. For purposes of the monetary relief provided in the proposed
 14 Decree, the Settlement Class is conditionally certified pursuant to Fed. R. Civ. P. 23(b)(3) and
 15 consists of:

16 (i) All Minority and/or female applicants who applied for
 17 employment as in-store hourly or managerial employees (hereafter
 18 "Associates") in Abercrombie stores, or attempted to apply and
 19 were discouraged from applying for employment, between
 20 February 24, 1999 and the Preliminary Approval Date and who
 21 were not hired, except those who file a timely request to opt out of
 22 the monetary relief provisions.

23 (ii) All Minority and/or female Associates of Abercrombie who
 24 are or were employed in an Abercrombie store, for any length of
 25 time, between February 24, 1999, and the Preliminary Approval
 26 Date, except those who file a timely request to opt out of the
 27 monetary relief provisions.

b. For purposes of the equitable and declaratory relief provided in the proposed Decree, the Settlement Class is conditionally certified pursuant to Fed. R. Civ. P. 23(b)(2) and consists of:

(i) All Minority and/or female applicants who applied for employment as Associates in Abercrombie stores, or attempted to apply and were discouraged from applying for employment, between February 24, 1999 and the Preliminary Approval Date and who were not hired.

(ii) All Minority and/or female Associates of Abercrombie who are or were employed in an Abercrombie store, for any length of time, between February 24, 1999, and the Preliminary Approval Date.

2. Should this Court or any reviewing court on direct appeal and/or on writ of certiorari to the Supreme Court of the United States from a direct appeal to the U.S. Court of Appeals for the Ninth Circuit refuse to approve this Consent Decree or require modification to this Decree, the Decree, including any stipulated class certification orders, shall be null and void, inadmissible and unusable in any court or proceeding regarding any issues whatsoever and shall not be considered a binding settlement agreement, unless Plaintiffs and Abercrombie each expressly and voluntarily approve in writing any such required modification by this Court or by the reviewing court.

BASED ON THE ABOVE STIPULATIONS, STATEMENTS OF COUNSEL FOR THE PARTIES AND THE ENTIRE RECORD BEFORE THE COURT, THE COURT FINDS AS FOLLOWS:

The parties have conditionally agreed to a proposed settlement. It appears to the Court that the proposed settlement and Consent Decree are the result of extensive, arms-length negotiations between the parties after extensive litigation including discovery of company policies, practices, and statistical data; administrative investigation by a federal agency, the Equal Employment Opportunity Commission (hereafter “EEOC”); and other exchanges of information

1 and discussions, and the assistance of a mediator. After reviewing the terms of the proposed
 2 Consent Decree in the context of the record in this action and the controlling legal authority, the
 3 Court finds that the proposed Consent Decree is sufficiently reasonable, adequate, fair and
 4 consistent with relevant state and federal law, to warrant notice thereof to members of the
 5 Settlement Class and a full hearing thereon.

6 IT IS THEREFORE ORDERED THAT:

7 1. The Consent Decree and the settlement it embodies are hereby
 8 PRELIMINARILY APPROVED. Final approval and entry of the Consent Decree is subject to
 9 the hearing of any objections of members of the Settlement Class to the proposed settlement
 10 embodied in the Consent Decree.

11 2. Pending the determination of the fairness of the Consent Decree, all further
 12 litigation of the consolidated actions is STAYED.

13 3. For purposes of settlement only as set forth in the Consent Decree, the
 14 Court hereby CERTIFIES the Gonzalez v. Abercrombie & Fitch and West v. Abercrombie &
 15 Fitch actions as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure
 16 for purposes of declaratory and equitable relief, and pursuant to Rule 23(b)(3) for purposes of
 17 monetary relief and hereby DESIGNATES a Settlement Class as follows:

18 a. For purposes of the monetary relief provided in the proposed
 19 Decree, the Settlement Class is conditionally certified pursuant to Fed. R. Civ. P. 23(b)(3) and
 20 consists of:

21 (i) All Minority and/or female applicants who applied for
 22 employment as Associates in Abercrombie stores, or attempted to
 23 apply and were discouraged from applying for employment,
 24 between February 24, 1999 and the Preliminary Approval Date and
 25 who were not hired, except those who file a timely request to opt
 26 out of the monetary relief provisions.

27 (ii) All Minority and/or female Associates of Abercrombie who
 28 are or were employed in an Abercrombie store, for any length of

1 time, between February 24, 1999, and the Preliminary Approval
 2 Date, except those who file a timely request to opt out of the
 3 monetary relief provisions.

4 b. For purposes of the equitable and declaratory relief provided in the
 5 proposed Decree, the Settlement Class is conditionally certified pursuant to Fed. R. Civ. P.
 6 23(b)(2) and consists of:

7 (i) All Minority and/or female applicants who applied for
 8 employment as Associates in Abercrombie stores, or attempted to
 9 apply and were discouraged from applying for employment,
 10 between February 24, 1999 and the Preliminary Approval Date and
 11 who were not hired.

12 (ii) All Minority and/or female Associates of Abercrombie who
 13 are or were employed in an Abercrombie store, for any length of
 14 time, between February 24, 1999, and the Preliminary Approval
 15 Date.

16 4. Should this Court or any reviewing court on direct appeal and/or on writ of
 17 certiorari to the Supreme Court of the United States from a direct appeal to the U.S. Court of
 18 Appeals for the Ninth Circuit refuse to approve this Consent Decree or require modification to
 19 this Decree, the Decree (and any stipulated class certification orders) shall be null and void,
 20 inadmissible and unusable in any court or proceeding regarding any issue whatsoever, and the
 21 Decree shall not be considered a binding settlement agreement, unless Plaintiffs, EEOC and
 22 Abercrombie each expressly and voluntarily approve in writing any such required modification
 23 by this Court or by the reviewing court.

24 5. Notice of Procedures

25 a. Publication Notice

26 Within sixty (60) days of the entry of this Order, the Company shall begin
 27 publication of the Notice set forth as Exhibit 2 hereto in the publications and internet media
 28 identified in Exhibit 3 hereto.

1 b. Claims Adminstrator

2 The Claims Adminstrator shall be Gonzalez v. Abercrombie Claims Administrator,
 3 P.O. Box 10564, Tallahassee, FL 32302-2564, telephone: (866) 854-4175.

4 c. Mailed Notice

5 Within twenty (20) days of entry of this Order, Abercrombie shall provide the
 6 Claims Administrator with a computer disk containing the full names, social security numbers,
 7 last known addresses and phone numbers, start dates, and, as applicable, end dates of employment
 8 with Abercrombie for all Associates employed by Abercrombie at any time from February 24,
 9 1999 through the Preliminary Approval Date who are potential Settlement Class members. It is
 10 understood, and acceptable, that Abercrombie only has such data available for Associates who
 11 were employed on January 1, 2000 and thereafter, which necessarily will include some, but not
 12 all, Associates employed between February 24 and December 31, 1999. Within twenty (20) days
 13 of entry of this Order, Plaintiffs' Lead Counsel shall provide the Claims Administrator with a
 14 computer readable list of all known potential Settlement Class members and their mailing
 15 addresses. Prior to the mailing of the Notices, the Claims Administrator will combine these lists
 16 of potential Settlement Class members received from Abercrombie and Lead Counsel and update
 17 any new address information for potential class members as may be available through the
 18 National Change of Address system. The Claims Administrator shall determine through a
 19 computer database search the most recent address that may be obtained for each person on the
 20 combined list of potential Settlement Class members. Within sixty (60) days of the entry of this
 21 Order, the Claims Administrator shall mail, via first class postage, Notice of Class Settlement (as
 22 set forth in Exhibit 4 hereto), the Claim Form (as set forth as exhibit 5 hereto), and the
 23 Explanation of Claims Procedure (as set forth in Exhibit 6 hereto) to all known potential
 24 Settlement Class members at their last known address and at the most recent address that may
 25 have been obtained through the computer database search.

26 6. The manner and forms of Notices and the Claim Forms and Instructions
 27 attached to this Stipulation and Order as Exhibits 2, 3, 4, 5, and 6 are hereby found, under the
 28 circumstances, to constitute the most effective and practicable notice of the pendency of the class

1 action, proposed settlement and fairness hearing to all class members who can be identified
 2 through reasonable effort and constitute due and sufficient notice for all other purposes to all
 3 persons entitled to receive notice required by due process and Rule 23 of the Federal Rules of
 4 Procedure. Pursuant to the parties' agreement, Abercrombie shall pay all costs of the publication
 5 Notice process, which will not exceed \$600,000.00, and will advance the costs of preparing,
 6 distributing and/or mailing the mailed Notices as provided in Section XVII.A.4.a. of the Decree.

7 7. Eligible members of the Settlement Class shall have until _____, _____,
 8 2005 (the "Claim Filing Deadline"), within which to complete and file their Claim Forms. Such
 9 Claim Forms shall be filed with the Claims Administrator at Gonzalez v. Abercrombie Claims
 10 Administrator, P.O. Box 10564, Tallahassee, FL 32302-2564. Claim Forms will be deemed filed
 11 on the postmark date shown on the envelope in which the completed Claim Form is mailed to the
 12 Claims Administrator. Failure to postmark a completed Claim Form by the Claim Filing
 13 Deadline shall bar the settlement Class member from having his or her request for a monetary
 14 award considered or from receiving any monetary award pursuant to the proposed Consent
 15 Decree. Settlement Class members who do not file timely and valid Claim Forms shall
 16 nonetheless be bound by the judgment and release in this action as set forth in the proposed
 17 Consent Decree.

18 8. It shall be the sole responsibility of each member of the Settlement Class
 19 who seeks a monetary award to notify the Claims Administrator if the class member changes his
 20 or her address. Failure of a Settlement Class member to keep the Claims Administrator apprised
 21 of his or her address may result in his or her claim being denied or forfeited.

22 9. A hearing pursuant to Rule 23(e), Federal Rules of Civil Procedure (the
 23 "Fairness Hearing"), shall be held at _____.m. on _____, 2005, at the United States
 24 District Courthouse, Courtroom 10, 19th Floor, 450 Golden Gate Avenue, San Francisco,
 25 California, at which time the Court shall consider the fairness of the Consent Decree and whether
 26 it should be approved and entered by the Court. If any attorney will be representing a class
 27 member objecting to the Consent Decree, the attorney shall file a notice of appearance with the
 28

1 Court and serve counsel for all parties on or before _____, 2005 [30 days before the
 2 Fairness Hearing].

3 10. Any member of the Settlement Class may object to the proposed Consent
 4 Decree by filing an objection and, if he or she so desires, appearing at the Fairness Hearing. To
 5 be considered by the Court, however any objection to the final approval of the Consent Decree
 6 must state the basis for the objection and must be timely filed in writing, along with any other
 7 papers the class member wishes the Court to consider, with the Claims Administrator, Gonzalez
 8 v. Abercrombie Claims Administrator, P.O. Box 10564, Tallahassee, FL 32302-2564 on or before
 9 _____, 2005 [30 days before the Fairness Hearing]. Any member of the class who
 10 does not timely file and serve such a written objection shall not be permitted to raise such
 11 objection, except for good cause shown, and any member of the class who fails to object in the
 12 manner prescribed herein shall be deemed to have waived, and shall be foreclosed from raising
 13 any such objection. The Claims Administrator shall record the date of receipt of each objection
 14 and shall forward copies of each objection to Abercrombie and to Plaintiffs' Lead Counsel within
 15 two (2) business days following receipt. The Claims Adminstrator shall also file the original of
 16 each objection with the Clerk of the Court no later than five (5) days prior to the Fairness Hearing
 17 date.

18 11. If objections are filed, Class Counsel, the EEOC or counsel for
 19 Abercrombie may engage in discovery concerning the filed objections prior to the Fairness
 20 Hearing. Class Counsel and Abercrombie shall serve on each other and file with the Court on or
 21 before three (3) days prior to the Fairness Hearing any further documents in support of the
 22 proposed Consent Decree, including responses to any papers filed by Settlement Class members.

23 12. Consistent with Section VII of the proposed Consent Decree providing for
 24 certification of the Settlement Class under Federal Rules of Civil Procedure 23(b)(3) for purposes
 25 of monetary relief, and in according with the requirement of Federal Rules of Civil Procedure
 26 23(b)(3), any potential Settlement Class member may request exclusion from the class, but only
 27 for purposes of opting-out of the monetary relief provisions.

1 13. Potential class members who wish to exclude themselves from membership
 2 in the Settlement Class for purposes of participation in the monetary portion of the settlement
 3 must do so in writing, by mailing a signed and dated "Opt-out" statement to the Claims
 4 Administrator at Gonzalez v. Abercrombie Claims Administrator, P.O. Box 10564, Tallahassee,
 5 FL 32302-2564 on or before _____, 2005 [30 days before the Fairness Hearing].
 6 Opt-out statements shall at a minimum contain the following language:

7 I am a Settlement Class Member in the lawsuit of Gonzalez v.
 8 Abercrombie & Fitch, Case No. 03-2817 or West v. Abercrombie &
 9 Fitch, Case No. 04-4730. I wish to opt out of the monetary portion
 of the settlement of this case.

10 I understand that I am requesting to be excluded from the class
 11 monetary settlement and that I will receive no money from the
 12 settlement fund created under the Consent Decree entered into by
 13 Abercrombie. I understand that if I am excluded from the class
 14 monetary settlement, I may be able to bring a separate legal action
 15 seeking damages, but may receive nothing or less than what I
 16 would have received if I had filed a claim under the class monetary
 17 settlement procedure in this case. I also understand that I may not
 18 seek exclusion from the class for injunctive relief and that I am
 19 bound by the injunctive provisions of the Consent Decree entered
 20 into by Abercrombie.

21 Only those class members who request exclusion in the time and manner set forth herein shall be
 22 excluded from the class for monetary relief purposes. Pursuant to the Federal Rules of Civil
 23 Procedure 23(b)(3) and (c)(2), the terms and provisions of the Consent Decree concerning
 24 monetary relief shall have no binding effect on any person who makes a timely request for
 25 exclusion in the manner required by this Order.

26 The Claims Administrator shall date stamp the original of each Opt-out statement
 27 and serve copies on Abercrombie, Plaintiffs' Lead Counsel and the EEOC within two (2) business
 28 days of receipt of such statement. The Claims Administrator shall also file the original Opt-out
 statements with the Clerk of the Court no later than five (5) days prior to the Fairness Hearing
 date.

29 14. Subject to Court approval, class members will be permitted to withdraw
 30 objections or requests for exclusion from the monetary provisions of the Decree by submitting a
 31 Rescission to the Claims Administrator at Gonzalez v. Abercrombie Claims Adminstrator, P.O.
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1 Box 10564, Tallahassee, FL 32302-2564 up to but not later than _____, 2005 [the Claim
 2 Filing Deadline]. A Rescission of Objection that shall at a minimum contain the following
 3 language:

4 I am a Settlement Class Member in the lawsuit of Gonzalez v.
 5 Abercrombie & Fitch, Case No. 03-2817 or West v. Abercrombie &
Fitch, Case No. 04-4730.

6 I previously submitted an Objection seeking to object to the class
 7 settlement. I have reconsidered and wish to withdraw my
 8 Objection. I understand that by rescinding my Objection I may not
 9 object to the settlement and may be eligible to receive an award
 from the claims settlement fund and may not bring a separate legal
 action against Abercrombie seeking damages.

10 A rescission of a request for exclusion from the monetary provisions of the Decree
 shall at a minimum contain the following language:

11 I am a Settlement Class Member in the lawsuit of Gonzalez v.
 12 Abercrombie & Fitch, Case No. 03-2817 or West v. Abercrombie &
Fitch, Case No. 04-4730.

13 I previously submitted an Opt-out statement seeking exclusion from
 14 the class monetary settlement. I have reconsidered and wish to
 15 withdraw my Opt-out statement. I understand that by rescinding
 16 my Opt-out I may be eligible to receive an award from the claims
 settlement fund and may not bring a separate legal action against
 Abercrombie seeking damages.

17 A class member submitting such a rescission statement shall sign and date the statement.

18 The Claims Administrator shall date stamp the original of each rescission
 19 statement and serve copies on both Abercrombie and Plaintiffs' Lead Counsel within two (2)
 20 business days of receipt of such statement. The Claims Administrator shall also file the rescission
 21 statements with the Clerk of the Court no later than five (5) days prior to the Fairness Hearing
 22 date.

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2 Dated: November 12, 2004
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Respectfully submitted,

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10 November 12, 2004

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17 *Attorneys for Defendant Abercrombie & Fitch, et al.*

18 **ORDER**

19 IT IS SO ORDERED.

20 Dated: November ___, 2004

21 _____
22 The Honorable Susan Illston
23 UNITED STATES DISTRICT JUDGE
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